

1 TRACY L. WILKISON
Acting United States Attorney
2 SCOTT M. GARRINGER/CHRISTOPHER D. GRIGG
Assistant United States Attorneys
3 Chiefs, Criminal and National Security Divisions
KAREN I. MEYER (Cal. Bar No. 220554)
4 DEVON MYERS (Cal. Bar No. 240031)
Assistant United States Attorneys
5 Violent & Organized Crime/Cyber & IP Crimes Sections
1300/1500 United States Courthouse
6 312 North Spring Street
Los Angeles, California 90012
7 Telephone: (213) 894-8559/0649
Facsimile: (213) 894-2927
8 E-mail: kim.meyer@usdoj.gov
devon.myers@usdoj.gov
9

10 LAUREN S. KUPERSMITH
KYLE P. REYNOLDS
Trial Attorneys
11 U.S. Dept. of Justice, Criminal Division
Child Exploitation and Obscenity Section
12 1301 New York Avenue, NW
Washington DC 20005
13 Telephone: (202) 514-1564
Facsimile: (202) 514-1793
14 E-mail: lauren.kupersmith@usdoj.gov
Kyle.reynolds@usdoj.gov
15

Attorneys for Plaintiff
16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,
20 Plaintiff,
21 v.
22 ARLAN WESLEY HARRELL, et al.,
23 Defendants.
24

No. CR 17-404(B)-AB-2

SECOND MEMORANDUM IN AID OF
DEFENDANT JOHN BRINSON, JR.'S
CHANGE OF PLEA AND PARTIES'
REVISED AND JOINT PROPOSED FACTUAL
BASIS

25 Plaintiff United States of America, by and through its attorneys
26 of record, the United States Attorney's Office for the Central
27 District of California and Assistant United States Attorneys Devon
28

Myers and Karen I. Meyer and Department of Justice Trial Attorneys Lauren Kupersmith and Kyle P. Reynolds, hereby submits this memorandum in aid of defendant JOHN BRINSON JR.'S ("defendant") Rule 11 plea. There was a change of plea hearing set on June 21, 2021, during which the parties could not agree on a factual basis to effect defendant's intention to plead guilty to all of the charges in which he is named in the Second Superseding Indictment, without a plea agreement. The parties have now agreed on the factual basis that is included herein and hope to have a date for a change of plea hearing before the Court very soon. The government hereby files a brief statement regarding the elements, penalties, and an updated factual basis supporting those counts in which defendant is named: Counts One, and Counts Three through Six.

Dated: July 1, 2021

Respectfully submitted,

TRACY L. WILKISON
Acting United States Attorney

SCOTT GARRINGER/CHRISTOPHER D. GRIGG
Assistant United States Attorneys
Chiefs, Criminal/National Security
Divisions

/S/

DEVON MYERS
KAREN I. MEYER
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

/S/

GREGORY NICOLAYSEN, ESQ

Attorney for Defendant
JOHN BRINSON, JR.

MEMORANDUM

I. GUILTY PLEA

Defendant is pleading guilty to all counts in the twenty-four count Second Superseding Indictment in which he is charged in United States v. Arlan Wesley Harrell, et al., 17-cr-404(B)-AB-2, which are Count One and Counts Three through Six.

Count One charges defendant with Child Exploitation Enterprise, in violation of Title 18, United States Code, Section 2252A(g). Counts Three through Six charge defendant with Production of Child Pornography, in violation of Title 18, United States Code, Sections 2251(a), (e), as well as the alternate theory of aiding and abetting the Production of Child Pornography in violation of Title 18, United States Code, Section 2(a).

II. NATURE OF THE OFFENSE

1. For defendant to be guilty of the crime charged in Count One, that is, Child Exploitation Enterprise, in violation of Title 18, United States Code, Section 2252A(g), the following must be true: (1) defendant knowingly produced, advertised, transported, distributed, or received child pornography in violation of Chapter 110 of Title 18, United States Code, as part of a series of felony violations constituting three or more separate incidents; (2) the incidents involved more than one victim; and (3) the defendant committed those offenses in concert with three or more other persons.

2. For defendant to be guilty of the crime charged in Counts Three through Six, that is, Production of Child Pornography, in violation of Title 18, United States Code, Sections 2251(a), (e), the following must be true: (1) at the time of the offense, the victim

1 was under the age of 18 years; (2) defendant employed, used,
2 persuaded, induced, enticed, or coerced the victim to take part in
3 sexually explicit conduct for the purpose of producing a visual
4 depiction of such conduct; and (3) (a) the visual depiction was
5 actually transported and transmitted using any means or facility of
6 interstate and foreign commerce and in and affecting interstate
7 commerce; or (b) the defendant knew or had reason to know that the
8 visual depiction would be transported or transmitted using any means
9 or facility of interstate or foreign commerce or in or affecting
10 interstate commerce; or (c) the visual depiction was produced or
11 transmitted using materials that have been mailed, shipped, or
12 transported in or affecting interstate or foreign commerce by any
13 means, including by computer.

14 3. For defendant to be guilty of Aiding and Abetting the
15 Production of Child Pornography, as charged as an alternative theory
16 in Counts Three through Six, in violation of Title 18, United States
17 Code, Section 2251(a), the following must be true: (1) someone else
18 committed the production of child pornography; (2) defendant aided,
19 counseled, commanded, induced or procured that person with respect to
20 at least one element of the production of child pornography; (3)
21 defendant acted with the intent to facilitate the production of child
22 pornography; and (4) defendant acted before the crime was completed.

23 **III. PENALTIES**

24 4. The statutory maximum sentence that the Court can impose
25 for a violation of Title 18, United States Code, Section 2252A(g),
26 is: life imprisonment; a lifetime period of supervised release; full
27 restitution to the victims of the offense; a fine of \$250,000 or
28

1 twice the gross gain or gross loss resulting from the offense,
2 whichever is greatest; and a mandatory special assessment of \$100 and
3 a \$5,000 special assessment pursuant to title 18, United States Code,
4 Section 3014 if the Court determines defendant is non-indigent.

5 5. The statutory maximum sentence that the Court can impose
6 for each violation of Title 18, United States Code, Sections 2251(a),
7 (e), is: 30 years' imprisonment; a lifetime period of supervised
8 release; full restitution to the victims of the offense; a fine of
9 \$250,000 or twice the gross gain or gross loss resulting from the
10 offense, whichever is greatest; and a mandatory special assessment of
11 \$100 and a \$5,000 special assessment pursuant to title 18, United
12 States Code, Section 3014 if the Court determines defendant is non-
13 indigent.

14 6. The total maximum sentence for all offenses to which
15 defendant is pleading guilty is: life imprisonment; a lifetime period
16 of supervised release; a fine of \$1,250,000 or twice the gross gain
17 or gross loss resulting from the offenses, whichever is greatest; a
18 mandatory special assessment of \$500 and a trafficking special
19 assessment of \$25,000, if the Court determines that defendant is not
20 indigent.

21 7. The statutory minimum sentence that the Court must impose
22 for a violation of Title 18, United States Code, Section 2252A(g),
23 is: 20 years' imprisonment; five years' supervised release; and a
24 mandatory special assessment of \$100.

25 8. The statutory minimum sentence that the Court must impose
26 for a violation of Title 18, United States Code, Section 2251(a), is:

1 15 years' imprisonment; five years' supervised release; and a
2 mandatory special assessment of \$100.

3 9. Supervised release is a period of time following
4 imprisonment during which defendant will be subject to various
5 restrictions and requirements. Defendant understands that if
6 defendant violates one or more of the conditions of any supervised
7 release imposed, defendant may be returned to prison for all or part
8 of the term of supervised release authorized by statute for the
9 offense that resulted in the term of supervised release.

10 10. By pleading guilty, defendant may be giving up valuable
11 government benefits and valuable civic rights, such as the right to
12 vote, the right to possess a firearm, the right to hold office, and
13 the right to serve on a jury. Once the Court accepts defendant's
14 guilty pleas, it will be a federal felony for defendant to possess a
15 firearm or ammunition. The convictions in this case may also subject
16 defendant to various other collateral consequences, including but not
17 limited to revocation of probation, parole, or supervised release in
18 another case and suspension or revocation of a professional license.
19 Defendant understands that unanticipated collateral consequences will
20 not serve as grounds to withdraw defendant's guilty pleas.

21 11. If defendant is not a United States citizen, the
22 convictions in this case makes it practically inevitable and a
23 virtual certainty that defendant will be removed or deported from the
24 United States. Defendant may also be denied United States
25 citizenship and admission to the United States in the future.
26 Defendant understands that while there may be arguments that
27 defendant can raise in immigration proceedings to avoid or delay
28

1 removal, removal is presumptively mandatory and a virtual certainty
2 in this case. Removal and immigration consequences are the subject
3 of a separate proceeding and that no one, including his attorney or
4 the Court, can predict to an absolute certainty the effect of his
5 convictions on his immigration status. Defendant nevertheless
6 affirms that he wants to plead guilty regardless of any immigration
7 consequences that his pleas may entail, even if the consequence is
8 automatic removal from the United States.

9 12. As a condition of supervised release, under Title 18,
10 United States Code, Section 3583(d), defendant will be required to
11 register as a sex offender. Independent of supervised release,
12 defendant will be subject to federal and state registration
13 requirements, for a possible maximum term of registration up to and
14 including life. Under Title 18, United States Code, Section 4042(c),
15 notice will be provided to certain law enforcement agencies upon his
16 release from confinement following conviction. The defendant must
17 register and keep the registration current in each jurisdiction in
18 which the defendant resides, is an employee, or is a student.
19 Requirements for registration include providing, among other
20 information, the defendant's true name, residence address, and names
21 and addresses of any places where the defendant is or will be an
22 employee or student. The requirement to keep the registration
23 current includes informing at least one jurisdiction in which the
24 defendant resides, is an employee, or is a student not later than
25 three business days after any change of the defendant's name,
26 residence, employment, or student status. Failure to comply with
27 these obligations subjects the defendant to prosecution for failure
28

1 to register under federal law, 18 U.S.C. § 2250, which is punishable
2 by a fine or imprisonment, or both.

3 **IV. FACTUAL BASIS**

4 13. The parties submit that this statement of facts is
5 sufficient to support pleas of guilty to the charges described in
6 this document, but it is not meant to be a complete recitation of all
7 facts relevant to the underlying criminal conduct or all facts known
8 to either party that relate to that conduct.

9 As to Count 1, BRINSON (a/k/a "king") was a member of "Website
10 A," which was an Internet-based, members-only bulletin board
11 dedicated to the production, advertisement, transportation, receipt,
12 distribution, and possession of child pornography depicting children
13 five years old or younger.

14 BRINSON became a member of Website A in February 2016. During
15 the course of his membership, BRINSON made at least 200 posts on
16 Website A under the username "king." When BRINSON was a member,
17 Website A had over one thousand members. Members could make "posts"
18 to Website A that often included child pornography images and videos
19 and links to child pornography.

20 Between approximately February 2016 and continuing through
21 approximately June 2017, within the Central District of California,
22 and elsewhere, BRINSON, acting in concert with a co-defendant and at
23 least two other members of Website A, engaged in a series of three or
24 more felony violations of advertisement of child pornography in
25 violation of 18 U.S.C. § 2251(d)(1)(A) and distribution of child
26 pornography in violation of 18 U.S.C. § 2252(a)(2). For example,
27
28

1 acting in concert with a co-defendant and at least two other members
2 of Website A, BRINSON made the following posts on Website A:

- 3 • On August 1, 2016, BRINSON made a post including images
4 that depicted a closeup of Minor Victim 3's unclothed penis
5 and an image that depicted an adult male penis touching the
6 unclothed buttocks of Minor Victim 3. Minor Victim 3 was
7 approximately six years old at the time.
- 8 • On November 19, 2016, BRINSON made a post including images
9 that depicted Minor Victim 3 laying on his back without
10 clothing and his legs spread with a focus on his genitalia.
11 The post also included at least one link to download the
12 images. Minor Victim 3 was approximately six years old at
13 the time.
- 14 • On January 25, 2017, BRINSON made a post including images
15 that depicted Minor Victim 3 orally copulating an adult
16 male and a closeup of Minor Victim 3's unclothed genitalia.
17 Minor Victim 3 was approximately six years old at the time.
- 18 • On June 10, 2017, BRINSON made a post that included a link
19 and a password to a video file that depicted anal-genital
20 sexual intercourse between an adult male and a toddler.

21 As to Count 3 through 5, between approximately September 24,
22 2016 and May 28, 2017, Harrell and BRINSON, each assisting the other,
23 created images and/or videos of Minor Victims 3, 11, and 12, which
24 depicted the Minor Victims engaging in sexually explicit conduct,
25 including, among other things, sexualized depictions of close-ups of
26 their naked genitals. Each image or video was produced or
27 transmitted using materials that were manufactured outside of
28

1 California. At all relevant times, Minor Victims 3, 11, and 12 were
2 under the age of twelve.

3 As to Count 6, between approximately December 19, 2016, and May
4 28, 2017, BRINSON and Moises Martinez, each assisting the other,
5 created images of Minor Victim 1, which depicted Minor Victim 1
6 engaging in sexually explicit conduct, including, among other things,
7 sexualized depictions of a close-up of Minor Victim 1's naked
8 genitals. Each image was produced or transmitted using materials
9 that were manufactured outside of California. At all relevant times,
10 Minor Victim 1 was under the age of twelve.

11 All of BRINSON's offenses described above took place in the
12 state of California and in whole or in part within the Central
13 District of California. He took these actions knowingly and
14 deliberately and not by mistake or accident. This Factual Basis does
15 not recite every fact known to the United States about BRINSON's
16 conduct, and it does not prevent either party from introducing
17 additional facts or evidence at sentencing.

18 **V. WAIVER OF CONSTITUTIONAL RIGHTS**

19 14. By pleading guilty, defendant gives up the following
20 rights:

- 21 a. The right to persist in a plea of not guilty.
- 22 b. The right to a speedy and public trial by jury.
- 23 c. The right to be represented by counsel - and if
24 necessary have the Court appoint counsel - at trial. Defendant
25 understands, however, that, defendant retains the right to be
26 represented by counsel - and if necessary have the Court appoint
27 counsel - at every other stage of the proceeding.

1 d. The right to be presumed innocent and to have the
2 burden of proof placed on the government to prove defendant guilty
3 beyond a reasonable doubt.

4 e. The right to confront and cross-examine witnesses
5 against defendant.

6 f. The right to testify and to present evidence in
7 opposition to the charges, including the right to compel the
8 attendance of witnesses to testify.

9 g. The right not to be compelled to testify, and, if
10 defendant chose not to testify or present evidence, to have that
11 choice not be used against defendant.

12 h. Any and all rights to pursue any affirmative defenses,
13 Fourth Amendment or Fifth Amendment claims, and other pretrial
14 motions that have been filed or could be filed.